REMARKS

The Final Office Action mailed December 18, 2006, has been received and reviewed. Claims 1-22 are pending in the application. Claims 1-22 have been rejected. Applicants have amended claims 1, 3, 7, 12, 14 and 18, and respectfully request reconsideration of the application as amended herein.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 5,923,650 to Chen et al in view of U.S. Patent App. 2001/0029178A1 to Criss et al.

Claims 1-22 were rejected as being unpatentable over U.S. Patent 5,923,650 to Chen et al in view of U.S. Patent App. 2001/0029178A1 to Criss et al. This rejection is respectfully traversed. Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-22 are improper because the elements for a prima facie case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

In the Response to Arguments section of the Final Office Action, the Examiner acknowledges Applicants' claim element of "***determining a transmission schedule*** for at least one subscriber station due ***for a transmission of data based on a forthcoming event***". The Examiner then alleges that the ***Chen*** reference's teaching "***to classify*** all remote user ***transmissions as either unscheduled or scheduled tasks*** (column 8, lines 51-59)" and the ***Criss*** reference's teaching "to provide ***pre-scheduled transmissions at the remote user*** (paragraph

0120)", when combined, results in the teaching of Applicants' claimed invention including the element of "***determining a transmission schedule*** for at least one subscriber station due ***for a transmission of data based on a forthcoming event***". Applicants respectfully disagree.

Generally, the ***Chen*** reference appears to only teach or suggest ***a transmission schedule for assigning a maximum scheduled transmission rate to remote stations*** (e.g., subscriber stations). Furthermore, the formation of such a maximum transmission rate schedule in the Chen reference appears to be developed ***based upon a present request*** from a remote station (e.g., subscriber station) for an immediate allocation of channel capacity ***based upon a present need*** which is in distinct **contrast** to Applicants' invention element of a schedule "based on a ***forthcoming*** event" as presently claimed.

Specifically, the Chen reference teaches or suggests:

> The ***schedule of the maximum scheduled transmissions rate*** is only transmitted to remote stations 6 which has been assigned or reassigned a transmission rate. (Chen, col. 14, lines 57-59; emphasis added)
>
> … the reverse link rate scheduling of the present invention can be staggered. In this embodiment, the ***scheduling can be triggered by*** certain events. For example, channel schedule 12 can perform the reverse link rate scheduling whenever ***a request for high speed data transmission*** is received ***or whenever a*** scheduled high speed data ***transmission*** by remote station 6 ***is completed***. (Chen, col. 14, lines 40-47; emphasis added).

Clearly the ***Chen*** reference teaches or suggests ***a schedule including*** the maximum scheduled ***transmission rate***. Furthermore, the ***Chen*** reference teaches or suggests scheduling ***based upon present needs/ requests or past/completed events***, namely, "scheduling can be triggered by … a request for high speed data transmission … or whenever a … transmission … is completed."

However, ***Applicants' invention*** as presently claimed includes a "transmission ***schedule to transmit data***" and the schedule is "based on a ***forthcoming event***". Specifically, Applicants' invention as presently claimed recites, in part:

> Independent Claim 1. … determining a ***transmission schedule to transmit data based on a forthcoming event for at least one subscriber station due for a transmission of the data*** …. (Emphasis added.)

Independent Claim 3. … determining a ***transmission schedule to transmit data based on a forthcoming event for at least one subscriber station due for a transmission of the data*** …. (Emphasis added.)

Independent Claim 7. … wherein a ***transmission schedule to transmit the data is based on a forthcoming event of at least one subscriber station due for a transmission of the data*** …. (Emphasis added.)

Independent Claim 12. … determine a ***transmission schedule to transmit data based on a forthcoming event for at least one subscriber station due for a transmission of the data*** …. (Emphasis added.)

Independent Claim 14. … determine a ***transmission schedule to transmit data based on a forthcoming event for at least one subscriber station due for a transmission of the data*** …. (Emphasis added.)

Independent Claim 18. … wherein a ***transmission schedule to transmit the data based on a forthcoming event of at least one subscriber station due for a transmission of the data*** …. (Emphasis added.)

The Final Office Action cites the Criss reference for teaching or suggesting "that a remote user can have a pre-scheduled transmission []." (Final Office Action, p. 3). However, even assuming the Criss reference teaches or suggests "that a remote user can have a pre-scheduled transmission" as alleged, neither the Chen reference nor the Criss reference, either individually or in any proper combination, teach or suggest Applicants' claimed invention including the above-recited claim elements.

Therefore, since neither the Chen reference nor the Criss reference teach or suggest Applicants' claimed invention including the respective above-recited claim elements, these references, either individually or in any proper combination, cannot render obvious, under 35 U.S.C. §103, Applicants' invention as presently claimed in amended independent claims 1, 3, 7, 12, 14 and 18. Accordingly, Applicants respectfully request the rejection of presently amended independent claims 1, 3, 7, 12, 14 and 18 be withdrawn.

The nonobviousness of independent claim 1 precludes a rejection of claim 2 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 1 and claim 2 which depends therefrom.

The nonobviousness of independent claim 3 precludes a rejection of claims 4-6 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 3 and claims 4-6 which depends therefrom.

The nonobviousness of independent claim 7 precludes a rejection of claims 8-11 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 7 and claims 8-11 which depends therefrom.

The nonobviousness of independent claim 12 precludes a rejection of claim 13 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 12 and claim 13 which depends therefrom.

The nonobviousness of independent claim 14 precludes a rejection of claims 15-17 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 14 and claims 15-17 which depends therefrom.

The nonobviousness of independent claim 18 precludes a rejection of claims 19-22 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 18 and claims 19-22 which depends therefrom.

ENTRY OF AMENDMENTS

The proposed amendments to claims 1, 3, 7, 12, 14 and 18 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

CONCLUSION

Claims 1-22 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

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